

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

966 CIVIL APPLICATION NO. 13042 OF 2017
IN
FA/4303/2008

M/S R.K.PATEL AND CO. TOBACCO
MANUFACTURERS & ORS.
VERSUS
RAJDHAR KALU PATIL ALIAS PATEL AND ORS.

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Mrs. C.S.Deshmukh h/f Mr. P.P.Dawalkar,
Advocate for applicants.

Mr. V.D.Hon, Senior Counsel i/b

Mr. A.V.Hon, Advocate for R – 1 to 3.

Mr. R.N.Dhorde, Senior Counsel i/b

Mr. V.R.Dhorde, Advocate for R – 4 & 5, 5-A,
5-C, 5-E.

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CORAM : V.L.ACHLIYA, J.

DATE : 19/07/2019

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ORAL ORDER :

1. Present application is filed by the applicants/appellants seeking permission to withdraw the amount deposited pursuant to the order dated 17/12/2008 passed by this Court. It is submitted that while admitting appeal and granting stay to the execution of decree the applicant/firm i.e. M/s R.K.Patel and Company Tobacco Manufacturer was directed to deposit amount @ Rs. One Lakh per month. In compliance of said order, the applicant has regularly deposited the amount and amount to the

tune of Rs. 57 Lakhs has been deposited with this Court.

2. It is submitted that parties have settled the dispute and it is agreed between the parties that the applicant shall be entitled to withdraw the amount deposited in the Court. Pursuant to the settlement, the Civil Application No. 15612 of 2013 was filed for withdrawal of amount. This Court [CORAM : K.U.CHANDIWAL, J.] vide order dated 07/02/2014 allowed the applicants to withdraw Rs. 30 Lakhs out of Rs. 57 Lakhs deposited in this Court. It is further submitted that in view of settlement between the parties, the applicant is entitled to withdraw the balance amount of Rs. 27 Lakhs together with interest. It is further submitted that as the plaintiffs have withdrawn the Suit, the applicants are entitled to withdraw the balance amount.

3. Learned counsel representing the respondents submits that they have no objection to allow the applicants to withdraw the amount lying deposited with the Court i.e. Rs. 27 Lakhs together with interest.

4. It appears from the record that as against the Judgment and decree dated 30/09/2008 passed in R.C.S.No. 1/1999 by District Judge-1, Amalner, District Jalgaon filed by M/s R.K.Patel and Company Tobacco Manufacturers, a registered partnership firm

and its partners – the defendants in Suit preferred appeal before this Court which is registered as F.A.No. 4303 of 2008 and 4302 of 2008. As against rejection of counter claim, the defendants in Suit preferred appeal which is registered as F.A. No. 4205 of 2008. At the time of admission of appeal, this Court [CORAM : V.R.KINGAONKAR, J.] vide order dated 17/12/2008 directed the appellants to deposit of Rs. 1 Lakh per month. Pursuant to said order, the appellants/original defendants have deposited the amount to the tune of Rs. 57 Lakhs.

5. In view of out of Court settlement between the parties, earlier the applicants have moved application seeking withdrawal of amount and same was registered as C.A. No. 15612 of 2013. By order dated 07/02/2014 [CORAM : K.U.CHANDIWAL, J.], the applicants were permitted to withdraw Rs. 30 Lakhs on furnishing solvent surety to the satisfaction of Registrar [Judicial]. Accordingly, Rs. 30 Lakhs was withdrawn by the applicants.

6. By the present application, the applicants have requested to allow them to withdraw the balance amount of Rs. 27 Lakhs together with interest accrued thereon. The appeals in which the direction was given to deposit the amount are disposed of in view of withdrawal of R.C.S.No. 1/1999 by the plaintiffs. Similarly, the counter claim filed by the

present applicants was also withdrawn in view of settlement between the parties. The appeals arising out of the decree passed by the trial Court i.e. F.A. Nos. 4302 of 2008, 4303 of 2008 and 4205 of 2008 are disposed of in view of withdrawal of Suit by the original plaintiffs. Thus, no appeal is pending against the Judgment and decree passed by the trial Court. The amount of Rs. 30 Lakhs already withdrawn by the applicants as per the order dated 07/02/2014 passed in the matter. The Advocate representing the respondents/original plaintiffs have stated that they have no objection to allow the applicants to withdraw the balance amount lying deposited in the Court together with interest accrued. In that view, there is no legal impediment to allow the applicants to withdraw the amount.

Hence, the following order.

ORDER

- [i] The applicants are permitted to withdraw the balance amount of Rs. 27 Lakhs together with interest accrued over the amount deposited pursuant to the order dated 17/12/2008 passed by this Court [CORAM : V.R.KINGAONKAR, J.] in F.A. Nos. 4302 of 2008, 4303 of 2008 and 4205 of 2008 on furnishing written undertaking by the applicants to the satisfaction of Registrar [Judicial] to the effect that in the event the

Court directs the applicants to re-deposit the amount, the applicants shall deposit the same within 2 weeks from the date of such order.

[ii] The amount be paid to be drawn and payable in the name of applicant No. 1 – a registered partnership firm.

[iii] In view of disposal of case, solvent surety, if any, furnished pursuant to the order dated 07/02/2014 stands discharged.

7. Civil Application disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

KNP.